

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY BRUSSELS IMMEDIATE
USMISSION GENEVA

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SMTN, EC BRUSSELS

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: SUGGESTED REDRAFTED PROVISIONS FOR PROPOSED
CUSTOMS VALUATION CODE

1. IN ACCORDANCE WITH OUR UNDERSTANDING WITH THE EC
REACHED IN GENEVA ON JUNE 9, WE ARE PROVIDING BELOW
SUGGESTED REDRAFTS OF CERTAIN SECTIONS OF THE PROPOSED
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CUSTOMS VALUATION CODE.

2. FOR USEC: PLEASE TRANSMIT THESE REDRAFTS TO HENRY
CHUMAS SOONEST.

3. FOR MTN GENEVA: BRUCE WILSON OF STR WILL HAND-CARRY
SOME ADDITIONAL MATERIAL FOR USE IN NEXT WEEK'S DISCUSSIONS.

4. BEGIN TEXT: ARTICLE 1, SUBPARAGRAPH (B). THE UNITED
STATES WOULD STILL LIKE TO DELETE THIS SUBPARAGRAPH AS IT

SERVES NO USEFUL PURPOSE. IF EC WISHES TO RETAIN IT, THE UNITED STATES WOULD LIKE TO SEE IT BRACKETED FOR THE TIME BEING.

5. ARTICLE 1, SUBPARAGRAPH (C). NOTE: AMONG OTHER CONDITIONS, ARTICLE 1 PROVIDES THAT A TRANSACTION VALUE CAN BE ESTABLISHED AS LONG AS THE SALE OR PRICE DOES NOT INCLUDE OR IS NOT CONDITIONED ON SOME FACTOR OR CONSIDERATION NOT SUBJECT TO VALUATION. SOME EXAMPLES OF THE TYPES OF FACTORS OR CONSIDERATIONS WHICH WOULD PREVALUATION UNDER ARTICLE 1 WOULD BE:

(A) THE SELLER FIXES THE PRICE OF THE IMPORTED GOODS SOLELY ON THE BASIS OF AN AGREEMENT THAT THE BUYER WILL ALSO PURCHASE A STATED QUANTITY OF ANOTHER PRODUCT.

(B) THE PRICE OF THE IMPORTED GOODS IS RELATED TO A PRICE OF ANOTHER PRODUCT SOLD BY THE IMPORTER TO THE EXPORTER.

(C) THE PRICE IS FIXED ON THE BASIS OF A FORM OF REMUNERATION HAVING NO RELATIONSHIP TO THE VALUE OF THE IMPORTED GOODS, SUCH S WHEN A SELLER PROVIDES A SEMIFINISHED PRO-LIMITED OFFICIAL USE
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DUCT AT A PRICE BASED ON THE CONDITION THAT HE WILL RECEIVE A NUMBER OF FINISHED PRODUCTS FREE OF CHARGE.

6. ARTICLE 2: (1) (A) IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF ARTICLE 1, THE CUSTOMS VALUE SHALL BE THE TRANSACTION VALUE (APPORTIONED ON A UNIT BASIS) OF IDENTICAL GOODS FOR EXPORT TO THE SAME COUNTRY OF IMPORTATION SOLD AT OR ABOUT THE SAME TIME AS THE SALE OF, OR OTHER TRANSACTION CONCERNING, THE IMPORTED GOODS, SUBJECT OTHERWISE TO THE PROVISIONS OF ARTICLE 1.

(B) IN APPLYING THIS ARTICLE, THE TRANSACTION VALUE OF IDENTICAL GOODS IN A SALE AT THE SAME COMMERCIAL LEVEL AND IN SUBSTANTIALLY THE SAME QUANTITIES AS THE GOODS BEING VALUED SHALL BE USED TO ESTABLISH THE CUSTOMS VALUE. IF NO SUCH SALE IS FOUND AND SALES OF IDENTICAL GOODS ARE FOUND AT THE SAME COMMERCIAL LEVEL BUT IN SUBSTANTIALLY DIFFERENT QUANTITIES, THE TRANSACTION VALUES OF THOSE SALES SHALL BE USED, ADJUSTED TO TAKE ACCOUNT OF DIFFERENCES IN UNIT PRICES ATTRIBUTABLE TO QUANTITY, PROVIDED THAT SUCH ADJUSTMENTS CAN BE MADE ON THE BASIS OF DEMONSTRABLE AND OBJECTIVE CRITERIA.

(2) FOR THE PURPOSES OF THIS (ARTICLE) "IDENTICAL GOODS" MEANS GOODS WHICH ARE THE SAME IN PHYSICAL CHARACTERISTICS

WITH AND WERE PRODUCED IN THE SAME COUNTRY BY THE SAME OR A DIFFERENT PERSON AS THE IMPORTED GOODS. THE PURPOSES OF THIS ARTICLE, GOODS PRODUCED BY THE SAME PERSON SHALL TAKE PRECEDENCE OVER GOODS PRODUCED BY A DIFFERENT PERSON.

(3) WHERE THE COSTS REFERRED TO IN ARTICLE 7(2) ARE INCLUDED IN THE TRANSACTION VALUE, AN ADJUSTMENT SHALL BE MADE TO TAKE ACCOUNT OF SIGNIFICANT DIFFERENCES IN SUCH COSTS BETWEEN THE IMPORTED GOODS AND THE IDENTICAL GOODS IN QUESTION ARISING FROM DIFFERENCES IN DISTANCES AND LIMITED OFFICIAL USE
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MEANS OF CARRIAGE. PRO MEMORIAM: A NOTE WILL BE NEEDED.

(4) IF, IN APPLYING THIS ARTICLE, MORE THAN ONE TRANSACTION OF IDENTICAL GOODS IS FOUND, THE LOWEST VALUE SHALL BE USED TO ESTABLISH THE CUSTOMS VALUE OF THE IMPORTED GOODS.

7. ARTICLE 2(1)(B).NOTE: QUANTITY ADJUSTMENTS SHALL NOT BE ARBITRARY BUT SHALL BE MADE ONLY ON THE BASIS OF DEMONSTRABLE AND OBJECTIVE CRITERIA THAT CLEARLY ESTABLISH THE REASONABLENESS AND ACCURACY OF THE ADJUSTMENTS WHETHER THEY INCREASE OR DECREASE THE VALUE. FOR EXAMPLE, IF THE IMPORTED GOODS BEING VALUED CONSIST OF A SHIPMENT OF 10 UNITS AND THE ONLY IDENTICAL GOODS FOR WHICH A TRANSACTION VALUE EXISTS INVOLVED A SALE OF 500 UNITS, AND IT IS RECOGNIZED THAT THE SELLER GRANTS QUANTITY DISCOUNTS, THE REQUIRED ADJUSTMENT MAY BE ACCOMPLISHED BY RESORTING TO THE SELLER'S PRICE LIST AND USING THAT PRICE APPLICABLE TO A SALE OF 10 UNITS. THIS DOES NOT REQUIRE THAT A SALE HAD TO HAVE BEEN MADE IN QUANTITIES OF 10 AS LONG AS THE PRICE LIST HAS BEEN ESTABLISHED AS BEING BONA FIDE THROUGH SALES AT OTHER QUANTITIES. IN THE ABSENCE OF SUCH AN OBJECTIVE MEASURE, HOWEVER, THE DETERMINATION OF VALUE UNDER ARTICLE 2 IS NOT APPROPRIATE AND AN ATTEMPT SHOULD THEN BE MADE UNDER ARTICLE 3.

8. ARTICLE 3. (1) (A) IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF ARTICLES 1 AND 2, THE CUSTOMS VALUE SHALL BE THE TRANSACTION VALUE (APPROXIMATED ON A UNIT BASIS) OF SIMILAR GOODS FOR EXPORT TO THE SAME COUNTRY OF IMPORTATION SOLD AT OR ABOUT THE SAME TIME AS THE SALE OF, OR OTHER TRANSACTION CONCERNING, THE IMPORTED GOODS, SUBJECT OTHERWISE LIMITED OFFICIAL USE
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TO THE PROVISIONS OF ARTICLE 1.

(B) IN APPLYING THIS ARTICLE, THE TRANSACTION VALUE OF SIMILAR GOODS IN A SALE AT THE SAME COMMERCIAL LEVEL AND IN SUBSTANTIALLY THE SAME QUANTITIES AS THE GOODS BEING VALUED SHALL BE USED TO ESTABLISH THE CUSTOMS VALUE. IF NO SUCH SALE IS FOUND AND SALES OF SIMILAR GOODS ARE FOUND AT THE SAME COMMERCIAL LEVEL BUT IN SUBSTANTIALLY DIFFERENT QUANTITIES, THE TRANSACTION VALUES OF THOSE SALES SHALL BE USED, ADJUSTED TO TAKE ACCOUNT OF DIFFERENCES IN UNIT PRICES ATTRIBUTABLE TO QUANTITY, PROVIDED THAT SUCH ADJUSTMENTS CAN BE MADE ON THE BASIS OF DEMONSTRABLE AND OBJECTIVE CRITERIA.

(2) FOR PURPOSES OF THIS (ARTICLE), "SIMILAR GOODS" MEAN GOODS WHICH HAVE LIKE CHARACTERISTICS AND COMPONENT MATERIALS AS, WHICH ARE COMMERCIALY INTERCHANGEABLE WITH, WHICH ARE USED FOR THE SAME PURPOSE AS, AND WHICH ARE PRODUCED IN THE SAME COUNTRY BY THE SAME OR A DIFFERENT PERSON AS THE IMPORTED GOODS. FOR PURPOSES OF THIS ARTICLE, GOODS PRODUCED BY THE SAME PERSON SHALL TAKE PRECEDENCE OVER GOODS PRODUCED BY A DIFFERENT PERSON.

(3) WHERE THE COSTS REFERRED TO IN ARTICLE 7(2) ARE INCLUDED IN THE TRANSACTION VALUE, AN ADJUSTMENT SHALL BE MADE TO TAKE ACCOUNT OF SIGNIFICANT DIFFERENCES IN SUCH COSTS BETWEEN THE IMPORTED GOODS AND THE SIMILAR GOODS IN QUESTION ARISING FROM DIFFERENCES IN DISTANCES AND MEANS OF CARRIAGE. PRO MEMORIAM: A NOTE WILL BE NEEDED.

(4) IF, IN APPLYING THIS ARTICLE, MORE THAN ONE TRANSACTION OF SIMILAR GOODS IS FOUND, THE LOWEST VALUE SHALL BE USED TO ESTABLISH THE CUSTOMS VALUE OF THE IMPORTED GOODS.

9. ARTICLE 3(1)(B). NOTE: QUANTITY ADJUSTMENTS SHOT BE ARBITRARY BUT SHALL BE MADE ONLY ON THE BASIS OF DEM-LIMITED OFFICIAL USE
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ONSTRABLE AND OBJECTIVE CRITERIA THAT CLEARLY ESTABLISH THE REASONABLENESS AND ACCURACY OF THE ADJUSTMENTS, WHETHER THEY INCREASE OR DECREASE THE VALUE. FOR EXAMPLE, IF THE IMPORTED GOODS BEING VALUED CONSIST OF A SHIPMENT OF 10 UNITS AND THE ONLY SIMILAR GOODS FOR WHICH A TRANSACTION VALUE EXISTS INVOLVED A SALE OF 500 UNITS, AND IT IS RECOGNIZED THAT THE SELLER GRANTS QUANTITY DISCOUNTS, THE REQUIRED ADJUSTMENT MAY BE ACCOMPLISHED BY RESORTING TO THE SELLER'S PRICE LIST AND USING THAT PRICE APPLICABLE TO A SALE OF 10 UNITS. THIS DOES NOT REQUIRE THAT A SALE HAD TO HAVE BEEN MADE IN QUANTITIES OF 10 AS LONG AS THE PRICE LIST HAS BEEN ESTABLISHED AS BEING BONA FIDE THROUGH SALES AT OTHER QUANTITIES. IN THE ABSENCE OF SUCH AN OBJECTIVE MEASURE, HOWEVER, THE DETERMINATION OF VALUE

UNDER ARTICLE 3 IS NOT APPROPRIATE.

10. OPTIONALITY FOR IMPORTER REGARDING USE OF DEDUCTIVE VALUE METHOD AND COMPUTED VALUE METHOD. THE UNITED STATES IS WILLING TO TRY TO BUILD IN AN ELEMENT OF OPTIONALITY FOR THE IMPORTER IN THE CODE REGARDING THE USE OF DEDUCTIVE VALUE AND COMPUTED VALUE. AT THE VERY LEAST, THE UNITED STATES WOULD LIKE TO SEE THE USE OF DEDUCTIVE VALUE AS OPTIONAL FOR THE IMPORTER. THE UNITED STATES OFFERS TWO POSSIBLE WAYS OF FORMULATING THIS OPTIONALITY (ARTICLE 3BIS AND ARTICLE 4BIS) FOR CONSIDERATION.

11. ARTICLE 3BIS (ALTERNATE FOR ARTICLE 4BIS).IF THE CUSTOMS VALUE OF THE IMPORTED GOODS CANNOT BE ESTABLISHED UNDER THE PROVISIONS OF ARTICLES 1,2AND 3, THE IMPORTER

SHALL HAVE THE OPTION OF HAVING THE GOODS VALUED UNDER THE PROVISIONS OF EITHER ARTICLE 4 OR ARTICLE 5. IN EXERCISING THIS OPTION, THE IMPORTER MUST AGREE TO FURNISH LIMITED OFFICIAL USE
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THE DATA REQUIRED TO APPLY THECLE AND TO ENSURE THAT OPPORTUNITY FOR VERIFICATION OF THAT DATA IS PROVIDED.

IF THE IMPORTER DOES NOT SELECT AN OPTION, THE CUSTOMS VALUE SHALL BE DETERMINED UNDER THE FIRST OF ARTICLES 4, 5, AND 5BIS IN THAT ORDER, FOR WHICH A VALUE CAN BE ESTABLISHED. IF THE IMPORTER OPTS FOR EITHER ARTICLE 4 OR ARTICLE 5 AND THE CUSTOMS VALUE CANNOT BE ESTABLISHED UNDER THE ARTICLE FOR WHICH THE IMPORTER OPTED, THE CUSTOMS VALUE SHALL BE DETERMINED UNDER THE PROVISIONS OF ARTICLE 5BIS.

12. ARTICLE 4BIS (ALTERNATE FOR ARTICLE 3BIS).IF THE IMPORTER SO DESIRES, HE MAY ELECT TO HAVE THE GOODS VALUED UNDER THE PROVISIONS OF ARTICLE 5 AND THE PROVISIONS OF ARTICLE 4 SHALL NOT BE USED TO VALUE THE GOODS. IN EXERCISING THIS OPTION, THE IMPORTER MUST AGREE TO FURNISH THE DATA REQUIRED TO APPLY ARTICLE 5 AND TO ENSURE THAT OPPORTUNITY FOR VERIFICATION OF THE DATA IS PROVIDED. IF THE CUSTOMS VALUE CANNOT BE ESTABLISHED UNDER THE PROVISIONS OF ARTICLE 5 IN THIS INSTANCE, THE CUSTOMS VALUE SHALL BE DETERMINED UNDER THE PROVISIONS OF ARTICLE 5BIS.

13. ARTICLE 4: THE EC AND AUSTRALIA HAVE SUGGESTED THAT SOME PROVISION ALONG THE FOLLOWING LINES BE INCLUDED IN ARTICLE 4 (DEDUCTIVE VALUE): WHERE A VALUE IS ESTABLISHED UNDER THIS ARTICLE, OTHER CLOSELY RELATED SHIPMENTS (PRO MEMORIAM: NOTE NEEDED ON TIME AND PRODUCT ELEMENTS OF CLOSELY RELATED SHIPMENTS) MAY BE VALUED ON A BASIS DERIVED FROM THE RATIO WHICH THE VALUE ESTABLISHED

UNDER THIS ARTICLE BEARS TO THE SALES PRICE OF SUCH GOODS,
PROVIDING THAT THE CIRCUMSTANCES OF SALE HAVE NOT CHANGED.
THE UNITED STATES IS WILLING TO EXPLORE THE POSSIBILITY OF
A PROVISION OF THIS TYPE.

14. ARTICLE 5: (1) IF THE CUSTOMS VALUE OF THE IMPORTED
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GOODS CANNOT BE DETERMINED UNDER THE PROVISIONS OF ARTICLES
1,2,3 AND 4 THE CUSTOMS VALUE SHALL BE BASED UPON A COMPU-
TED VALUE. COD VALUE SHALL CONSIST OF THE SUM OF:-

(A) THE COST OR VALUE OF MATERIALS AND FABRICATION OR
OTHER PROCESSING EMPLOYED IN PRODUCING THE IMPORTED GOODS;

(B) THE GENERAL EXPENSES ACTUALLY INCURRED IN THE PRO-
DUCTION AND SALE OF THE IMPORTED GOODS, OR WHERE NOT
AVAILABLE, AN AMOUNT FOR THE USUAL GENERAL EXPENSES
INCURRED IN THE PRODUCTION AND SALE OF IDENTICAL OR
SIMILAR GOODS;

(C) THE PROFIT ACTUALLY ADDED BY THE PRODUCTION AND
SALE OF THE IMPORTED GOODS, OR WHERE THIS PROFIT IS
FOUND TO BE DEFICIENT OR IS NOT AVAILABLE, AN AMOUNT FOR
THE USUAL PROFIT ADDED IN CONNECTION WITH THE PRODUCTION
AND SALE OF IDENTICAL OR SIMILAR GOODS; AND

(D) THE COST OR VALUE OF ALL OTHER EXPENSES NECESSARY
TO REFLECT THE VALUATION OPTION CHOSEN BY THE SIGNATORY
UNDER ARTICLE 7(2).

(2) FOR PURPOSES OF THIS ARTICLE, NO SIGNATORY MAY REQUIRE
OR COMPEL ANY PERSON ESTABLISHED OR RESIDENT IN ANOTHER
COUNTRY TO PRODUCE FOR EXAMINATION, OR TO ALLOW ACCESS TO,
ANY ACCOUNT OR OTHER RECORD FOR THE PURPOSE OF DETERMIN-
ING THE CUSTOMS VALUE.

15. ARTICLE 6: (1) IN DETERMINING WHETHER THE TRANSACTION
VALUE IS ACCEPTABLE FOR THE PURPOSES OF ARTICLE 1, THE
FACT THAT THE BUYER AND THE SELLER ARE RELATED WITHIN THE
MEANING OF ARTICLE 16 SHALL NOT IN ITSELF BE GROUNDS FOR
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REGARDING THE TRANSACTION VALUE AS UNACCEPTABLE. IN SUCH
CASES THE CIRCUMSTANCES SURROUNDING THE SALE SHALL BE
EXAMINED AND THE TRANSACTION VALUE SHALL BE ACCEPTED UN-
LESS THE RELATIONSHIP INFLUENCED THE PRICE.

(2) THE TRANSACTION VALUE SHALL BE ACCEPTED AND THE GOODS VALUED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 1 WHENEVER THE IMPORTER, OR OTHER PERSON RESPONSIBLE FOR DECLARING THE GOODS, CAN DEMONSTRATE THAT SUCH VALUE CLOSELY APPROXIMATES ONE OF THE FOLLOWING:

(A) THE TRANSACTION VALUE IN SALES TO UNRELATED BUYERS OF IDENTICAL OR SIMILAR (AS DEFINED IN ARTICLES 2 AND 3) FOR EXPORT TO THE SAME COUNTRY OF IMPORTATION;

(B) THE PRICE PAID OR PAYABLE IN SALES TO UNRELATED BUYERS OF IDENTICAL OR SIMILR GOODS IN THE EXPORTING COUNTRY WITH ADJUSTMENTS FOR COSTS NOT INCURRED IN EXPORT SALES;

(C) THE VALUE OF IDENTICAL OR SIMILAR GOODS AS DETERMINED UNDER THE PROVISIONS OF ARTICLE 4 OR ARTICLE 5.

(D) THE TRANSACTION VALUE IN SALES TO UNRELATED BUYERS FOR EXPORT TO THE SAME COUNTRY OF IMPORTATION OF GOODS FROM OTHER COUNTRIES WHICH WOULD BE IDENTICAL OR SIMILAR TO THE IMPORTED GOODS EXCEPT FOR HAVING A DIFFERENT COUNTRY OF ORIGIN.

(3) IN APPLYING THE TESTS SET FORTH IN PARAGRAPH (2) ABOVE, DUE ACCOUNT SHALL BE TAKEN OF DIFFERENCES IN COMMERCIAL AND QUANTITY LEVELS, THE ELEMENTS ENUMERATED IN ARTICLE 7, AND DIFFERENCES ATTRIBUTABLE TO COSTS INCURRED BY THE SELLER IN SALES TO UNRELATED BUYERS WHICH ARE NOT INCURRED BY THE SELLER IN SALES TO RELATED BUYERS.

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(4) THE TESTS SET FORTH IN PARAGRAPH (2) ABOVE ARE TO BE USED FOR COMPARISON PURPOSES ONLY, AND SUBSTITUTE VALUES MAY NOT BE ESTABLISHED BY THE PROVISIONS OF THIS ARTICLE.
CHRISTOPHER

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